

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

MEMORANDUM

TO: Cathy Noon and Timothy Mauck
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2018
SUBJECT: Proposed initiative measure 2017-2018 #182 regarding Transportation Funding

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To temporarily increase the rate of the state sales and use tax for 20 years beginning in 2019 from 2.9% to 3.25%.

2. To authorize the executive director of the department of transportation to issue additional revenue anticipation notes with a \$3,720,000,000 maximum total principal amount, a \$6,200,000,000 maximum total repayment cost, and a 20-year term.
3. To allocate the revenue from the temporary sales and use tax rate increase as follows:
 - a. 20% to the multimodal transportation options fund; and
 - b. 80% to the local transportation priorities fund.
4. To further allocate the 80% to the local transportation priorities fund:
 - a. 50% to counties; and
 - b. 50% to cities and counties, cities, and incorporated towns.
5. To specify that general fund money allocated to the state highway fund "based on the provisions of Senate Bill 18-001" be used to "make principal and interest payments on transportation revenue anticipation notes, which notes shall be issued for the purposes and under the conditions provided in Senate Bill 18-001."
6. To specify that the general fund money allocated to the state highway fund in Senate Bill 18-001 not be used to support toll highways or, if expended for toll lane construction or maintenance, that certain minimum requirements be met regarding construction and toll revenue.
7. To further allocate the 20% to the multimodal transportation options fund:
 - a. The first \$30 million to "make principal and interest payments on transportation revenue anticipation notes for those multimodal projects selected by the transportation commission where a state agency, local government or local transit agency has committed to provide required matching fund equal to the amount expended from the fund for a project";
 - b. 85% of the remaining revenue for "capital or operating costs for fixed route and on-demand transit; transportation demand management programs; multimodal mobility projects enabled by new technology; studies; and bicycle or pedestrian projects" chosen by the transportation commission based on a formula dependent on population and transit ridership; and

- c. 15% of the remaining revenue for capital or operating costs, evaluated and chosen by the transportation commission, for "bustang, bustang outrider, or other inter-regional public transit, park-n-ride lots and transit stations; transportation demand management programs; multi-modal mobility projects enabled by new technology; planning and engineering studies needed to plan and construct multimodal projects; and capital and operating costs for bicycle and pedestrian projects that further the state's goals for multimodal transportation."
8. To specify that the revenue from the temporary sales and use tax rate increase does not need to be credited to the old age pension fund as is required by article XXIV of the state constitution because the existing sales tax revenue already fully funds the old age pension fund.
9. To specify that the revenue from the temporary sales and use tax rate increase and the proceeds of the additional transportation revenue anticipation notes, including earnings on the revenue and proceeds may be retained and spent by the state, cities, and counties as voter-approved revenue changes and are exempt from all revenue, spending, and other limitations under section 20 of article X of the state constitution or any other law.
10. To specify that the increased sales and use tax rate is not imposed on aviation fuels.
11. To specify that the revenue from the temporary sales and use tax rate increase that is attributable to retail marijuana sales is not credited to the marijuana tax cash fund.
12. To require the department of transportation to annually report to the joint budget committee, legislative audit committee, House of Representatives transportation and energy committee, and Senate transportation committee regarding its use of revenue anticipation note proceeds and to post the reports and certain user-friendly, project-specific information on its website.
13. To create the transportation revenue anticipation notes citizen oversight committee to provide oversight of the expenditure by the department of transportation of the proceeds of additional revenue anticipation notes. The committee must annually report to the General Assembly's transportation legislation review committee regarding its activities and findings.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
3. The proposed initiative specifies that the revenue from the temporary sales tax rate increase and proceeds of the additional transportation revenue anticipation notes, including the earnings or the revenue and proceeds may "be retained and spent by the state, cities and counties as voter-approved revenues changes" and is "exempt from all revenue, spending, and other limitations under section 20 of article X of the constitution or any other law" (known as "De-Bruced").
 - a. Is it possible for this initiative alone to exclude the additional revenue from a local government's fiscal year spending limit or does that require the local government to also seek voter approval? Do all local governments want this revenue to be "De-Bruced"?
4. With respect to the distribution of the revenue in the multimodal transportation options fund:
 - a. The proposed initiative says that "up to \$30 million dollars per year" may be "expended to make principal and interest payments on transportation revenue anticipation notes for those multimodal projects selected by the transportation commission where a state agency, local government or local transit agency has committed to provide required matching funds equal to the amount expended from the fund for a project." Is it correct that "transportation revenue anticipation notes" refers to the revenue anticipation notes that the department may issue pursuant to section 43-4-705 (13)(b), Colorado Revised Statutes?
 - b. With respect to proponents' section 43-1-106 (8)(t)(I), what are the "state's goals for multimodal transportation"?
 - c. With respect to proponents' section 43-1-106 (8)(t)(II):

- i. Is the reference to the "transportation advisory committee" the committee of the same name created in section 43-1-1104 (1)(a), Colorado Revised Statutes?
 - ii. Is the reference to the "transit and rail advisory committee" a reference to the "special interim transit and rail advisory committee" referred to in section 43-1-1104 (1)(b), Colorado Revised Statutes?
 - iii. What do the proponents mean by "transit advocacy organizations"?
 - iv. What do the proponents mean by "bicycle and pedestrian advocacy organizations"?
 - v. How is money "allocated to" a "metropolitan planning organization"?
 - vi. The proposed initiative specifies that the "funds shall be expended on . . . studies;". What kind of "studies"?
- 5. The amending clause in proponents' section 10 contains the instruction "In...43-1-125, **repeal** (1) and (2) and **amend** as follows:" but the language is all new as is the section number.
 - a. Is it the proponents' intent to change section 43-1-125 as added in Senate Bill 18-001? If so, please correct the amending clause to "In Colorado Revised Statutes, **amend as added by Senate Bill 18-001** 43-1-125 as follows:". And then please strike the language added by Senate Bill 18-001 and add a new subsection (3) and (4).
 - b. If not, please correct the amending clause to "**add** 43-1-125 as follows:" and include a section number and headnote to your newly added section.
- 6. With respect to the proponents' section 11:
 - a. What version of Senate Bill 18-001 is the proposed initiative referring to? As introduced in the Senate? As introduced in the House? As signed by the Governor?
 - i. Is subsection (3) of the proposed initiative's legislative declaration in the proponents' section 1 intended to apply as a definition of term "Senate Bill 18-001" as used throughout the proposed

initiative? If so, a declaration of the voters' intent is arguably not sufficient to set forth the law on which to read the remainder of the proposed initiative, and the proponents should consider placing a definition of the term "Senate Bill 18-001" in law instead of in a declaration.

- b. If Senate Bill 18-001 does not pass, what money must be used to pay the principal and interest payments on the revenue anticipation notes?
 - c. The proponents' language says, "which notes shall be issued for the purposes and under the conditions provided in Senate Bill 18-001", but what about the proponents' section 14? What about the \$30 million that, according to the proponents' initiative (section 43-4-1103 (2)(a)) must be used "to make principal and interest payments on transportation revenue anticipation notes for those multimodal projects selected by the transportation commission"?
7. With respect to the revenue anticipation notes that the proposed initiative authorizes the department to issue:
- a. Can the notes be issued in more than one issuance over several years? If so, the temporary sales tax rate increase may expire before the notes have been paid off. Is that the proponents' intent?
 - b. Is it the proponents' intent that of the authorized \$3,720,000,000 principal amount, \$30 million be used for multimodal options as specified in the proposed initiative, or is the \$30 million in addition to the authorized \$3,720,000,000 principal amount?
 - c. Should language be included that requires the transportation commission to adopt a resolution pledging to annually allocate money needed for payment of the notes until the notes are fully paid?
8. Section 16 of the proposed initiative creates the "transportation revenue anticipation notes citizen oversight committee" and proponents' section 43-4-714.5 (2)(a) specifies that the committee is responsible for verifying that the note proceeds are expended "in compliance with the requirements of section 43-4-714 (2)." However, the proposed initiative does not create a section 43-4-714 (2), nor is such a section in current law. What is meant by this requirement?
9. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative

that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Revised Statutes. However, non-statutory language, such as the legislative declaration in section 1 of the proposed initiative, does not need to appear in small capital letters.
2. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
3. On page 5, in the second line, there is an extra "T".

4. On page 13, there is an extra comma between "hundred" and "twenty" in the third line of subsection (b).
5. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."